

EXHIBIT E

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8 PLAINTIFFS IN PRO PER

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

9 OLIVER HILSEN RATH

10 Plaintiff,

11 v.

12 MIKE SHEPARD, HELLER EHRMAN
13 LLP, AND DOES 1-5,

14 Defendants,

15 HANA HILSEN RATH, NAMA
16 HILSEN RATH, LIOR HILSEN RATH,
17 ELLA HOPE HILSEN RATH, ISAIAH
18 BENJAMIN HILSEN RATH, SAUL
19 NATHANIEL HILSEN RATH

20 Third Party Plaintiffs

Case No:

C 07 3586

EDL

COMPLAINT FOR MALPRACTICE,
NEGLIGENCE, BREACH OF "THE DUTY
OF CARE", AIDING AND ABETTING
BREACH OF CIVIL RIGHTS GRANTED
BY THE 4TH, 5TH AND THE 6TH
AMENDMENT OF THE CONSTITUTION

I hereby certify that the annexed
instrument is a true and correct copy
of the original on file in my office.
ATTEST:

RICHARD W WIEKING
Clerk, U.S. District Court
Northern District of California

Deputy Clerk

Date 7-18-07

INTRODUCTION

- 21
- 22 1. Plaintiff Oliver Hilsenrath and Third Party Plaintiffs Hana
- 23 Hilsenrath et al. respectfully submit this current complaint
- 24 in pro per.
- 25 2. Defendants' actions in this current complaint lead to the
- 26 destruction of the Hilsenrath family assets and rendered hired
- 27 legal representation inaccessible.
- 28

- 1 3. In 2003, the US government indicted Oliver Hilsenrath with
2 tens of counts of embezzlement from his former employer US
3 Wireless Corporation.
- 4 4. Hilsenrath and his family, Israeli and US citizens, lived at
5 the time in Tel Aviv, Israel.
- 6 5. Hilsenrath hired Mike Shepard from Heller Ehrman within days
7 from the issuance of the indictment to negotiate an agreement
8 with the US government to enable him to return to the US and
9 defend the charges.
- 10 6. Such agreement was reached in December 2004 upon which
11 Hilsenrath and his family traveled to the US to defend the
12 charges.
- 13 7. Shortly upon the Hilsenraths' return to the US, it turned
14 clear that the allegations of embezzlement could not be
15 substantiated and the US government changed the crux of the
16 case to alleged tax evasion.
- 17 8. Such shift was however to be prevented by the Heller Ehrman
18 agreement.
- 19 9. The sloppy wording of the Heller Ehrman agreement allowed the
20 US government to abandon the embezzlement theory for which
21 they sought the Hilsenraths and refocus on a new alleged tax
22 case amid sworn statements from both Hilsenrath and Heller
23 Ehrman that the return agreement prohibited such shift.
- 24 10. For 3 years, the US government leveraged on the ambiguous and
25 sloppy Heller Ehrman language in the agreement, to freeze
26 Hilsenraths assets all over the world, with no relation to the
27 alleged embezzlement.
- 28 11. In 3 years, those assets were destroyed.
12. Hilsenrath ended defending a complex, white-collar criminal
case in pro per.
13. That case was recently concluded in a settlement that requires
\$2 million in alleged civil taxes and penalties payments to
the US government.

1 14. Those tax allegations were and are with no relation to any of
2 the corporate fraud allegations that brought Hilsenrath to the
3 US.

4 JURISDICTION AND VENUE

5
6 15. Plaintiffs hired the services of Heller Ehrman from their home
7 in Tel-Aviv, Israel, as citizens and residence of the State of
8 Israel¹.

9 16. Shepard and Heller Ehrman are an individual and a corporation
10 operating in San Francisco, California.

11 17. The Federal Court has jurisdiction over this case and the
12 venue in the Northern District of California is adequate
13 pursuant to 28 U.S.C. 1331, § 1332.

14 LIMITATION OF STATUTE

15 18. The Hilsenrath criminal case was concluded in July 2007.

16 19. A tolling agreement with Heller Ehrman is in place till July
17 15, 2007.

18 20. Therefore no limitations of statute are applicable as a
19 defense to this complaint.

20 THE PARTIES

21 **Plaintiffs and Third Party Plaintiffs (Jointly "the Plaintiffs")**

22 21. Plaintiff Oliver Hilsenrath and Third Party Plaintiff Hana
23 Hilsenrath² are Israeli and United States citizens and
24 residents of Tel Aviv, Israel. Plaintiffs temporarily reside
25 in the State of California for the purpose of defending legal
26 actions brought by the US government.

27 ¹ The Hilsenraths are also US citizens and presently reside in California for the sole purpose of
28 defending the US government's action.

² Husband and wife

- 1 22. Plaintiffs Hana and Oliver Hilsenrath (HILSEN RATH) are both
2 professionals with high academic degrees obtained in Israel.
3 23. Hana Hilsenrath has devoted her last 25 years solely to
4 raising the family's 6 children and had at no time, any
5 involvement in Mr. Hilsenrath's businesses.
6 24. Third Party Plaintiffs 2-6 are the Hilsenrath children, 4 of
7 which are minors.
8 25. They are all present here in California accompanying their
9 parents in their travel to the US to defend the US government
10 charges, and stranded in this jurisdiction as the result of
11 defendants' actions.
12 26. As a direct result of defendants' carelessness, plaintiffs'
13 assets were unjustly frozen and lost.
14 27. More so, as the result of defendants' carelessness plaintiffs
15 were sanctioned with \$2 million of alleged civil taxes and
16 penalties.

15 **Defendants**

- 16
17 28. Defendant Mike Shepard (SHEPARD) is a criminal defense
18 attorney working for the lawfirm of Heller Ehrman LLP (HEL) in
19 San Francisco California.
20 29. Does 1-5 are other persons related to the defendants that
21 might be identified in the future.

22 **THE DUTY OF CARE**

- 23 30. Defendants failed in their "duty of care" to plaintiffs to
24 ensure that the legal pleadings on behalf of plaintiff, the
25 return agreement with the US government, were legally
26 sufficient.
27 31. The present complaint asserts "Professional Negligence" based
28 on defendants' "fiduciary duty to represent plaintiff
competently and diligently."

1 32. Plaintiffs have valid causes of action for legal malpractice
2 against defendants.

3 33. Plaintiffs will demonstrate: (1) breach of the attorney's duty
4 to use such skill, prudence, and diligence as other members of
5 the profession commonly possess and exercise³; (2) a proximate
6 causal connection between the negligent conduct and the
7 resulting injury⁴; and (3) actual loss or damage resulting from
8 the negligence."

9 ALLEGATIONS

10 34. In July 2003, the US government unsealed and published an
11 indictment against Oliver Hilsenrath, a citizen of Israel and
12 a then resident of Tel Aviv.

13 35. The indictment was generally alleging that Hilsenrath has
14 embezzled millions of dollars from his employer US Wireless
15 between 1996 and 2001.

16 36. Four years later those allegations proved to have been
17 baseless.

18 37. Nevertheless, the US government presented in July 2003, in a
19 press conference that it was seeking to extradite Hilsenrath
20 in order to bring him to justice.

21 38. By a friend's recommendation Hilsenrath immediately in July
22 2003 contacted Shepard by telephone from Tel-Aviv with the
23 objective to seek representation in the case.

24 39. From Tel Aviv, Hilsenrath paid an initial retainer, signed a
25 retention agreement, and instructed Shepard to contact the US
26 government.

27 ³ "Whatever tax..." where defendants knew those taxes should be restricted to taxes resulting from
28 alleged fraud and the entire agreement was to preserve right applicable in an extradition process.

⁴ It is undisputed that entire case of the US government ended up being the "Whatever loophole in
Shepard's agreement resulting in both destruction of assets as well as the entire \$2 million payment
to the US government.

1 40. Shepard contacted AUSA Hartley West (WEST) at the San
2 Francisco US attorney's office who gave Shepard the following
3 information:

- 4 i. The US government was interested in Hilsenrath's
5 voluntary appearance in the US court without the need of
6 extradition;
7 ii. The government intended to supersede the indictment to
8 add additional wire and mail fraud charges;
9 iii. The government intended to add alleged tax evasion
10 charges for monies resulting from the embezzlement and
11 fraud charges;
12 iv. AUSA West indicated that she would have liked to add
13 money laundry charges but said she believed that such
14 charges would not pass the dual criminality test with
15 Israeli law.

16 41. More than a year later in November 2004, Shepard concluded an
17 agreement with West for Hilsenrath's return.

18 42. The statement that "Oliver Hilsenrath and his family travel
19 voluntarily to the United States to appear in federal court"
20 governed the terms of the agreement.

21 43. Hilsenrath was waving by that any rights he might have had
22 under the extradition treaty.

23 44. The return agreement served the purpose of protecting
24 Hilsenrath on account of all rights conferred by the
25 extradition treaty between Israel and the United States.

26 45. The Shepard-West agreement included:

- 27 i. Pre-trial release conditions for Oliver Hilsenrath based
28 on the surrender of 4 family member passports;
ii. A bond guaranteed by Hana Hilsenrath through a power of
attorney signed by Hana Hilsenrath in favor of HEL and
Shepard to execute on the family's residence in Tel-Aviv.

1 iii. A statement that the government has completed its
2 superseding and there will be no more addition of charges
3 after Hilsenrath's appearance in court.

4 iv. A statement that the only item the government was still
5 to add to the indictment was alleged tax charges for
6 funds resulting from the fraud and embezzlement alleged
7 in the indictment.

8 46. In a sworn declaration a year later in October 2005, Shepard
9 states clearly that the understanding in the above agreement
10 with the US government was that the addition of alleged tax
11 charges would be limited to alleged taxes on funds allegedly
12 resulting from the fraud scheme in the indictment.

13 47. Unfortunately Shepard's choice of words in the above agreement
14 was "to add whatever taxes you have in process".

15 48. That sloppy, careless and unprofessional choice of words:
16 "whatever tax..." proved to bear catastrophic consequences for
17 the Hilsenraths in the following years.

18 49. AUSA West seized the opportunity in Shepard's sloppy
19 "whatever".

20 50. Immediately after the Hilsenrath sizable family arrived in San
21 Francisco, AUSA West sent an order to freeze internationally
22 all Hilsenrath assets and savings in excess of \$6.5 million.

23 51. Hilsenrath brought a series of motions targeted to prove that
24 the frozen assets have no relation to the alleged fraud in the
25 indictment and is cutting the Hilsenrath's lifeline in both
26 the survival of the family away from home in California, as
27 well as in hiring legal counsel to defend the government's
28 case.

 52. The court accepted Hilsenrath's assertion that the frozen
 funds were not related to the alleged embezzlement and fraud,
 but stated that given Shepard's "whatever tax" the government
 can still pursue all of Hilsenrath's assets and savings for
 tax allegations.

1 53. This was the sum of all fears for the Hilsenraths: to be lured
2 into this jurisdiction by bogus fraud allegations just in
3 order to fall into a fiscal trap.

4 54. This was exactly what the Shepard - West agreement was meant
5 to prevent.

6 55. In a court hearing on the subject, Judge William H. Alsup,
7 concluded that there is a striking disparity between Shepard's
8 declaration that the agreement was intended to restrict
9 alleged tax charges to funds resulting from the alleged fraud
vis-a-vis his wording "whatever tax..."

10 56. Judge Alsup proceeded to permit the government to prosecute
11 alleged tax with no relation to the alleged fraud while
12 stating: "Hilsenrath might have a malpractice case against
Shepard..."

13 57. The Hilsenrath assets stayed frozen in several international
14 jurisdictions while crippling the Hilsenraths' business and
15 their partners in several European countries.

16 58. The freeze went beyond bank accounts to living operations, to
17 irreparable liquidation of assets.

18 59. Due to the lack of funds, Oliver Hilsenrath ended up
19 representing himself in the complex, high-risk white-collar
criminal case.

20 60. In July 2007, the Criminal case against Hilsenrath was
21 concluded and settled.

22 61. Mr. Hilsenrath and the US government agreed that Hilsenrath
23 (1) underpaid approximately \$20,000 of taxes related to part
24 of his salary and (2) did not disclose the same in his
company's annual the same report.

25 62. Nevertheless, Oliver Hilsenrath was committed to payment of \$2
26 million of civil taxes and penalties allegedly owed to the
27 United States, and not related to the indictment but related
28 to Shepard's "whatever".

1 63. This payment was presented as a condition of the US government
2 to dismiss the criminal charges and was entirely rooted in the
3 "whatever tax..." miswording.

4 64. Shepard's careless and sloppy "whatever tax" practically
5 annulled the agreement targeted to --

6 i. Restrict tax allegations to only clearly alleged and
7 publicly disclosed charges and --

8 ii. Prevent a torturous and murky fishing escapade of the
9 government after the Hilsenraths' appearance in this
10 jurisdiction.

11 65. Shepard's failure to do so caused in summary:

12 i. Loss of \$2 million to the US government

13 ii. Created an opportunity to prosecute Oliver Hilsenrath on
14 charges understood not to be brought, while prolonging
15 the case another 2 years.

16 iii. Created the opportunity for the government to
17 internationally freeze Hilsenrath assets on account of
18 alleged tax charges against the spirit of the agreement.

19 FIRST CAUSE OF ACTION

20 (Refund of legal fees)

21 Plaintiffs incorporate each of the above paragraphs by reference.

22 66. Defendants provided sloppy and unprofessional legal service
23 and breached their duty of care to the plaintiff while causing
24 catastrophic damage.

25 67. Plaintiff are entitled to have defendants refund all legal
26 fees paid in relation to HEL's representation in this matter
27 in the amount of \$200,000.

28 WHEREFORE, plaintiffs pray relief as set forth below.

29 SECOND CAUSE OF ACTION

30 (Constructive trust re refund of legal fees)

31 Plaintiffs incorporate each of the above paragraphs by reference.

1 68. Defendants provided sloppy and unprofessional legal service
2 and breached their duty of care to the plaintiff while causing
3 catastrophic damage.

4 69. Plaintiffs are entitled to a constructive trust on all legal
5 fees paid to HEL between 2003 to 2005.

6 WHEREFORE, plaintiffs pray relief as set forth below.

7 **THIRD CAUSE OF ACTION**

8 **(Refund of payments to the United States)**

9 Plaintiffs incorporate each of the above paragraphs by reference.

10 70. Defendants provided sloppy and unprofessional legal service
11 and breached their duty of care to the plaintiff while causing
12 catastrophic damage.

13 71. Based on defendants unprofessional conduct, the Hilsenraths
14 lost the protection of the return agreement with the
15 government when deciding to travel to the US.

16 72. Based on defendants' unprofessional conduct, the US government
17 was able to shift the focus of its initial charges to a tax-
18 allegations case and impose a \$2 million payment on
19 plaintiffs.

20 73. Plaintiff are entitled to have defendants refund all fines
21 resulting from their careless and unprofessional conduct in
22 the amount of \$2 million.

23 WHEREFORE, plaintiffs pray relief as set forth below.

24 **FOURTH CAUSE OF ACTION**

25 **(Refund of "tax"-related frozen assets)**

26 Plaintiffs incorporate each of the above paragraphs by reference.

27 74. By their breach of the duty of care, defendants aided and
28 abetted the breach of plaintiffs' right to property pursuant
29 to the 4th and 5th amendment of the constitution.

30 75. Plaintiffs were collectively deprived of their property and
31 savings due to a government action solely based on defendants
32 sloppy representation, lack of care and unprofessional

1 handling of the Hilsenrath return agreement in which they
2 failed to confer the said protections of an extradition
3 waiver.

4 76. By that defendants paved the way for the US government to
5 effect an improper international freeze of assets that lead to
6 the destruction of most Hilsenrath family savings.

7 77. Plaintiffs are entitled to this Court's order to compensation
8 in the value of all assets, related to the "whatever tax..."
9 that were lost in value of at least \$7.3 million and other
10 damages according to proof.

11 WHEREFORE, plaintiffs pray relief as set forth below.

12 **FIFTH CAUSE OF ACTION**

13 **(Constructive trust re "tax"-related frozen assets)**

14 Plaintiffs incorporate each of the above paragraphs by reference.

15 78. Defendants' conduct enabled the US government to effect a tax-
16 allegations related international freeze of assets starting
17 April 2005.

18 79. Plaintiffs are entitled to this Court's order of a
19 constructive trust on all assets frozen by the US government
20 as the result of defendants' "whatever tax..." agreement.

21 WHEREFORE, plaintiffs pray relief as set forth below.

22 **SIXTH CAUSE OF ACTION**

23 **(Recovery of damages as the result of breach of due process in
24 violation of the 6th amendment)**

25 Plaintiffs incorporate each of the above paragraphs by reference.

26 80. Defendants' aided and abetted the breach of plaintiff's right
27 of due process pursuant to the 6th amendment of the US
28 Constitution.

81. The freeze of alleged tax related assets denied Plaintiffs
ability to hire legal counsel to defend the charges brought by

1 the US government and to prosecute even this very present
2 complaint other than in pro per.

3 82. As the result, plaintiffs have suffered damages in the amount
4 of a \$2 million payment to the US government that should have
5 been avoided if the plaintiffs had (1) a properly worded
6 return agreement and (2) the funds to hire proper legal
7 counsel- funds unavailable as the result of HEL's lack of
8 care.

9 83. Plaintiffs are seeking additional compensation according to
10 proof.

11 WHEREFORE, defendants pray relief as set forth below.

12 **SEVENTH CAUSE OF ACTION**

13 **(Prolonged case for additional two years)**

14 Plaintiffs incorporate each of the above paragraphs by reference.

15 84. The US government determined that its case was without base by
16 summer 2005 and shifted its focus to a fiscal case.

17 85. This shift was possible solely due to defendants' sloppy and
18 unprofessional representation of plaintiffs and its sloppy
19 wording of "whatever taxes..."

20 86. Plaintiffs are entitled to recover all expenses, losses and
21 legal fees incurred in relation to defendants' actions that
22 prolonged the government's case for another two years.

23 WHEREFORE, defendants pray relief as set forth below.

24 **PRAYER**

25 By way of this complaint plaintiffs pray relief as follows:

26 87. That this Court order defendants to pay plaintiffs an amount
27 of not less than \$200,000 - equal to all the legal fees paid
28 to HEL.

88. That this Court order a constructive trust over all legal fees
paid to HEL.

- 1 89. That this Court order defendant to pay plaintiffs a sum no
2 less than \$2 million - equal to the payments imposed by the
3 government by leveraging on defendants' incompetent wording of
4 the return agreement.
- 5 90. That this Court order defendants to pay plaintiffs an amount
6 of not less than \$7.3 million - equal to all their frozen and
7 destroyed assets.
- 8 91. That this Court order a constructive trust over all frozen and
9 lost assets as the result of the government's leverage on
10 defendants' incompetent wording of the return agreement.
- 11 92. That this Court order defendants to further compensate
12 plaintiff for being deprived of the right to due process,
13 legal counsel of choice in the criminal case and other case as
14 the result of the crippling effect of the "whatever tax..." in
15 the amount of at least \$2 million.
- 16 93. That this Court order defendants to further reimburse
17 plaintiffs for damages incurred as the result of the
18 prolongation of the criminal case for additional 2 years
19 according to proof.
- 20 94. That this Court award further relief according to proof.
- 21 95. That this Court award such other and further relief as it
22 deems proper.

23 Dated: July 10, 2007

24 Respectfully submitted,

25 Hilsenrath Hana
26 HANA HILSENATH

27 Oliver Hilsenrath
28 OLIVER HILSENATH